

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

C.W.P. No. 4440 of 1986

DATE OF DECISION : 09.11.2010

Banwari (Dead) through LRs

.... PETITIONER

Versus

Financial Commissioner, Haryana, Chandigarh and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: None for the petitioner.

Mr. D. Khanna, Addl. A.G., Haryana,
for respondents No.1 and 2.

Mr. Sudhir Mittal, Advocate,
for respondents No.3 to 6.

* * *

SATISH KUMAR MITTAL, J (Oral)

This petition was filed by the petitioner challenging the order dated 5.12.1985 (Annexure P-4), passed by the Financial Commissioner, Haryana, whereby the revision petition filed by Nirupma Devi (respondent No.3 herein) daughter of Mahadev (a big land owner), challenging the order of sanctioning mutation of ownership qua the land in question, passed by the Assistant Collector Ist Grade, Hisar, which was confirmed by the Collector, Hisar, was allowed and the matter was remanded to the Assistant Collector Ist Grade, Hisar, for deciding the matter afresh, after hearing the parties and allowing them to lead evidence.

The brief facts of the case are that the petitioner was a tenant on 12 Kanals of land, belonging to Mahadev, a big land-owner. The petitioner filed purchase application under Section 18 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the Act of 1953') for purchasing the said land. The Assistant Collector Ist Grade, Hisar, vide his order dated 5.7.1962, allowed the said application and permitted the petitioner to purchase the said land on payment of certain amount, which was to be paid in six equal monthly instalments. The petitioner did not make any payment. However, it was alleged by him that he made certain payment in that regard to the General Power of Attorney of said Mahadev. Thereafter, on 24.2.1975, the petitioner moved an application before the Assistant Collector Ist Grade, Hisar, for sanctioning of mutation of ownership in his favour with regard to the said land, on the basis of the aforesaid purchase order. The Assistant Collector Ist Grade, Hisar, vide order dated 11.7.1975 (Annexure P-1) allowed the application and sanctioned mutation of the said land in favour of the petitioner. Aggrieved against the said order, Nirupama Devi (respondent No.3 herein) filed an appeal before the Collector, Hisar, on the ground that no instalment with regard to payment of the aforesaid amount was paid to the land-owner, which the petitioner was required to deposit in the Government Treasury. The said appeal filed by respondent No.3 was dismissed by the Collector, Hisar, vide order dated 7.9.1976 (Annexure P-2). The said order was challenged by respondent No.3 before the Commissioner, Hisar Division,

Hisar, who vide his order dated 12.3.1980 (Annexure P-3), after coming to the conclusion that the payment of instalment was not made by the petitioner, made reference to the Financial Commissioner, Haryana, with the recommendation to set aside the orders dated 11.7.1975 (Annexure P-1) and 7.9.1976 (Annexure P-2), passed by the Assistant Collector Ist Grade, Hisar, and the Collector, Hisar, respectively, and to remand the case to the Assistant Collector Ist Grade, Hisar. Accordingly, the Financial Commissioner, Haryana, vide his order dated 5.12.1985 (Annexure P-4) accepted the said recommendation and remanded the matter.

Though learned counsel for the petitioner is not present, but with the assistance of learned counsel for the respondents, I have gone through the impugned orders. The Commissioner, Hisar Division, Hisar, while recommending to the Financial Commissioner for setting aside the order of sanctioning the mutation, has observed that as per Rule 23 (3) of the Punjab Security of Land Tenures Rules, 1956 (hereinafter referred to as 'the Rules'), the tenant, in whose favour an order to purchase the land is passed, is required to deposit the amount of instalment within 15 days, either in a Government treasury or a sub-treasury or to pay it to the Assistant Collector Ist Grade. Admittedly, in the instant case, the petitioner has neither deposited any amount in a Government treasury or a sub-treasury nor he has made any payment in the court of Assistant Collector Ist Grade. He only alleges that some amount was paid by him to the General Power of Attorney of Mahadev, the big land owner, which has been denied

by the big land owner. In his order, the learned Commissioner has observed that the petitioner has not paid the price of the land to the land owner in terms of the order dated 5.7.1962. His statement to the effect that he had been paying instalments to the Munshi of Mahadev, the big land owner, cannot be accepted, because he has not produced any receipt issued by him. It has been further held that under Rule 23 (3) of the Rules, the amount of instalment fixed under Section 18 of the Act of 1953 could be deposited in the Treasury within 15 days after the decision of the Assistant Collector. In this regard, the learned Commissioner has relied upon a decision of the Financial Commissioner, in **Peman Ram v. Smt. Kheoni and others**, 1963 PLJ 35, wherein it was held that under Rule 23 (3) of the Rules, the tenant is required to deposit the compensation either in Government Treasury or Sub Treasury or to pay to the Assistant Collector Ist Grade having jurisdiction. Direct payment to the land owner has not been contemplated by the Rules. It has been further held that a tenant, who disregards the Rules and takes the risk of paying instalments to the land owner without getting a receipt, must pay for the consequences of his folly. The subsequent payment deposited by the tenant on 11.8.1973 was held to be illegal being time barred. Therefore, it was held that the Assistant Collector Ist Grade has committed grave illegality while sanctioning mutation of ownership in favour of the petitioner. The learned Financial Commissioner accepted the said recommendation made by the learned Commissioner and thereafter, set aside the orders dated 11.7.1975 (Annexure P-1) and 7.9.1976 (Annexure

P-2), passed by the Assistant Collector Ist Grade, Hisar, and the Collector, Hisar, respectively, and remanded the case to the Assistant Collector Ist Grade, Hisar. I do not find any illegality in the said order and the same does not require any interference by this Court under Article 226 of the Constitution of India.

Dismissed.

November 09, 2010
ndj

(SATISH KUMAR MITTAL)
JUDGE

Refer to Reporter